IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1466 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNITED INDIA INSURANCE CO.LTD.

Versus

THAKKAR HASUMATIBEN KANTILAL

Appearance:

1. First Appeal No. 1466 of 1984
MR PV NANAVATI for Petitioner No. 1
NOTICE SERVED for Respondent No. 1,3-9
..... for Respondent No. 2

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of decision: 18/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE H.K.RATHOD)

Heard learned advocate Mr. Nanavati for the appellant. Notice of admission issued by this Court has been served upon the respondents but they have not appeared before this court either in person or through any advocate. Therefore, the matter has been taken up for hearing in their absence.

During the course of hearing, learned advocate Mr. Nanatati has raised the only one contention that at the time of accident, the deceased was a pillion rider on the scooter and, therefore, the insurance company is not liable to pay the compensation. This contention was raised by the appellant insurance company before the tribunal in its written statement at Exh. 8 that the accident was an act of God and that in any event, since the deceased was the pillion rider on the scooter, the insurance company is not liable to pay because the risk of any injury or death of a pillion rider on the motor cycle was not covered by the policy. Before the Tribunal, one Haribhai Fulchand was examined at Exh. 31 on behalf of the original claimant and opponent no.1 has tendered his evidence at Exh. 38. In para 12 of the award, evidence of both the witnesses was considered by the tribunal. It was observed by the tribunal that the version of the opponent No.1 that Kantibhai was not a pillion rider is contrary to his own police statement. It was also observed that, however, the question whether the fact that there is contradiction between the police statement and the evidence on this point of opponent no.1 is sufficient to hold that Kantibhai was pillion rider on the motor cycle. Before the tribunal, there was no sufficient substantive evidence to the effect that Kantibhai was not standing on the road but was pillion rider when the accident occurred. Before the tribunal, only two witnesses were examined on the point as aforesaid. Both of them have stated that Kantibhai was standing on the road. The fact that opponent no.1 has contradicted himself as compared to his own police statement may justify at the most only contradiction in his evidence but then also the fact remains that Haribhai has supported the version of the claimants that Kantibhai was standing on the road when he was knocked down by the motor cycle. The tribunal, therefore, believed the oral evidence of the witness Haribhai who was the eye witness and rejected the oral evidence of the opponent no.1 on this point.

We have perused the impugned award made by the tribunal and have also perused the evidence on record before the tribunal. The contention raised by Mr. Nanavati that the insurance company was not liable since the deceased was pillion rider on the motor cycle has to be appreciated by us on the basis of the oral evidence of Haribhai and opponent No.1 which has been appreciated by the tribunal in para 12 of its award. The evidence of the witness Haribhai was supporting the version of the claimants that Kantibhai was standing on the road when he was knocked down by the motor cycle and it was believed by the tribunal as he was the eye witness. We are of the view that the tribunal was right in believing the evidence of the witness Haribhai was supporting the version of the claimants that Kantibhai was standing on the road when he was knocked down by the motor cycle and it was believed by the tribunal as he was the eye witness. We, therefore, do not find any substance in the contention raised by Mr. Nanavati. We, therefore, reject the contention raised by Mr. Nanavati.

Except this, no other contention has been raised by Mr. Nanavati on behalf of the appellant. Therefore, in view of these facts, according to our opinion, the tribunal has rightly appreciated the oral evidence of Haribhai and opponent No.1 and has rightly believed the oral evidence of Haribhai and rejected the oral evidence of opponent No. 1 We are of the view that the tribunal has not committed any error in believing the evidence of the witness Haribhai. Thus, there is no substance in the present appeal and the same is required to be dismissed. Same is dismissed accordingly with no order as to costs.

18.10.2002. (Kshitij R.Vyas,J.)

(H.K. Rathod,J.)

Vyas